

(c) *Scope.* Oral presentations shall be conducted in an informal manner and shall be limited to clarifying or elaborating upon information that has already been filed with the Appeal Deciding Officer. New information may be presented only if it could not have been raised earlier in the appeal and if it would be unfair and prejudicial to exclude it.

(d) *Requests.* A request for an oral presentation included in an appeal shall be granted by the Appeal Deciding Officer unless the appeal has been dismissed under § 214.10.

(e) *Availability.* Oral presentations may be conducted during appeal of a decision, but not during discretionary review.

(f) *Scheduling and rules.* The Appeal Deciding Officer shall conduct the oral presentation within 10 days of the date a reply to the responsive statement is due. The Appeal Deciding Officer shall notify the parties of the date, time, and location of the oral presentation and the procedures to be followed.

(g) *Participation.* All parties to an appeal are eligible to participate in the oral presentation. At the discretion of the Appeal Deciding Officer, non-parties may observe the oral presentation, but are not eligible to participate.

(h) *Summaries and transcripts.* A summary of an oral presentation may be included in the appeal record only if it is submitted to the Appeal Deciding Officer by a party to the appeal at the end of the oral presentation. A transcript of an oral presentation prepared by a certified court reporter may be included in the appeal record if the transcript is filed with the Appeal Deciding Officer within 10 days of the date of the oral presentation and if the transcript is paid for by those who requested it.

#### § 214.17 Appeal record.

(a) *Location.* The Appeal Deciding Officer shall maintain the appeal record in one location.

(b) *Contents.* The appeal record shall consist of information filed with the Appeal Deciding Officer, including the appealable decision, appeal, intervention request, responsive statement, reply, oral presentation summary or transcript, procedural orders and other rulings, and any correspondence or

other documentation related to the appeal as determined by the Appeal Deciding Officer.

(c) *Closing of the record.* (1) The Appeal Deciding Officer shall close the appeal record on:

(i) The day after the date the reply to the responsive statement is due if no oral presentation is conducted;

(ii) The day after the oral presentation is conducted if no transcript of the oral presentation is being prepared; or

(iii) The day after the date a transcript of the oral presentation is due if one is being prepared.

(2) The Appeal Deciding Officer shall notify all parties to the appeal of closing of the record.

(d) *Inspection by the public.* The appeal record is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

#### § 214.18 Appeal decision.

(a) Appeal decisions made by the Appeal Deciding Officer shall be issued within 30 days of the date the appeal record is closed.

(b) The appeal decision shall be based solely on the appeal record and oral presentation, if one is conducted.

(c) The appeal decision shall conform to all applicable laws, regulations, policies, and procedures.

(d) The appeal decision may affirm or reverse the appealable decision, in whole or in part. The appeal decision must specify the basis for affirmation or reversal and may include instructions for further action by the Responsible Official.

(e) Except where a decision to conduct discretionary review has been made and a discretionary review decision has been issued, the appeal decision shall constitute USDA's final administrative decision.

#### § 214.19 Procedures for discretionary review.

(a) *Initiation.* (1) One day after issuance of an appeal decision, the Appeal Deciding Officer shall send a copy of the appeal decision, appeal, and appealable decision to the Discretionary